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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A.S. et al., Persons Coming Under the Juvenile Court Law.	B232818
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. K.S., Defendant and Appellant.	(Los Angeles County Super. Ct. No. CK74754)

APPEAL from an order of the Superior Court of Los Angeles County. Marilyn H. Mackel, Commissioner. Reversed and remanded.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal, for Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Judith A. Luby, Deputy County Counsel, for Respondent.

Mother K.S. appeals from the trial court's order summarily denying without a hearing her Welfare and Institutions Code section 388 petition.[1] We reverse and remand.

FACTS AND PROCEEDINGS

As of September 2008, appellant K.S. (Mother) had given birth to three children from three different fathers: A. born in 1998, J. born in 2000, and K. born in 2001. In September 2008, respondent Department of Children and Family Services (DCFS) filed a petition under section 300 alleging that Mother and the children's primary caretaker, maternal grandmother, had used inappropriate physical discipline against the children. The petition also alleged Mother's history of illegal drug use rendered her unable to care for the children and placed them at risk of harm. Mother submitted on the petition, and in October 2008 the court sustained it.[2] The court placed the children with maternal relatives, but because of K.'s behavioral problems, she was placed in a residential group home.

In the meantime, Mother gave birth in April 2009 to a fourth child, K.St. In November, DCFS filed a section 300 petition alleging Mother had failed to provide for K.St.'s proper care and continued to have contact with K.St.'s father, who was a registered sex offender ordered not to have contact with minors. In March 2010, the court sustained the allegations and placed K.St. with a maternal relative.

In the October 2010 review hearing, the court found Mother was in partial compliance with her case plan but had violated court orders restricting the children's

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[1] All further section references are to the Welfare and Institutions Code.

[2] Mother submitted on the allegations of illegal drug use and inability to care for her children, but disputed the trial court's jurisdictional finding that she had used inappropriate physical discipline against the children and took an appeal from that finding. In an unpublished opinion, we affirmed the trial court's jurisdictional order. (*In re A.S.* (July 23, 2009, B211892) [nonpub. opn.].)

contact with certain individuals. The court terminated Mother's reunification services for all four children and set a section 366.26 permanent plan hearing.

In April 2011, Mother filed her section 388 petition at issue here. Her petition alleged she had completed her case plan and complied with all court orders. She requested that the court place her children with her and order resumption of family reunification services. According to her petition, her requests were in the children's best interests because the children were closely bonded to her from regular contact and visitation. The court summarily denied Mother's petition without a hearing on the ground her petition did not allege new evidence or a change in circumstances that made modification of the court's order in the children's best interests. This appeal followed.

DISCUSSION

Section 388 permits a parent to petition the dependency court to change a previous order when the change would be in a child's best interests.[3] For a petition to succeed, the parent must present new evidence or circumstances that justify modifying a court's prior order. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 806-807.) Touching family ties that society deems constitutionally worthy, section 388 gives a parent one last chance to save a parent-child relationship following termination of reunification services but before termination of parental rights. (*In re Jackson W.* (2010) 184 Cal.App.4th 247, 258; *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1506-1508.) In deciding whether to grant a hearing on a section 388 petition, the juvenile court may summarily deny the petition without a hearing if the court finds that the "petition . . . fails to state a change of circumstances or new evidence that may require a change of order or termination of jurisdiction or, that the

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[3] Section 388, subdivision (a) provides: "Any . . . person having an interest in a child who is a dependent child of the juvenile court . . . may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court . . . for a hearing to change, modify, or set aside any order of court previously made . . . ."

requested modification would promote the best interest of the child." (Cal. Rules of Court, rule 5.570(d).) On the other hand, if the petition states a prima facie case for relief, the court shall conduct a hearing. (§ 388, subd. (d).) Courts must construe a 388 petition liberally in favor of granting a hearing. (Cal. Rules of Court, rule 5.570.) "If the petition presents *any* evidence that a hearing would promote the best interests of the child, the court must order the hearing. [Citation.] The court may deny the application ex parte only if the petition fails to state a change of circumstance or new evidence that even *might* require a change of order or termination of jurisdiction." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461, italics in original.)

We review a dependency court's ruling denying a section 388 petition under the deferential abuse of discretion standard. (*In re A.A.* (2012) 203 Cal.App.4th 597, 612; *In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.) The petition alleged Mother had completed her case plan, participated in individual and family counseling, and maintained a bond with her children through regular visitation, but the court summarily denied the petition. Mother contends the court erred in refusing to set a hearing on her petition. We agree. We are mindful that only rarely should we reverse the denial of a section 388 petition. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 522.) The issue before us, however, is not whether the section 388 petition should be granted on its merits but only whether the court was obligated to conduct a hearing on the petition. A parent "need only make a prima facie showing of the [changed circumstances/best interests of the child] elements to trigger the right to a hearing on a section 388 petition and the petition should be liberally construed in favor of granting a hearing to consider the parent's request." (*In re Zachary G., supra,* 77 Cal.App.4th at p. 806.)

We conclude Mother's petition sufficiently stated a prima facie case for relief for which the court should have conducted a full hearing. She alleged participation in individual and family counseling. (See *In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432 [parent alleged prima facie case for section 388 hearing where she had "completed numerous educational programs and parenting classes, and had tested clean in weekly random drug tests for over two years. She had visited consistently with the children and

continued to have a strongly bonded relationship with them"].) Additionally, Mother submitted two letters which, if believed, tended to establish her regular contact and visitation with her children.

The first letter was from the group home in which K. lived. The letter stated Mother had met with the home's family therapist intern and intended to continue therapy. According to the letter, Mother "has shown interest in her children and would like to work on her building a relationship with her children." Hoping to help Mother achieve her goals, the therapist wrote: "I would like to work on the family structure and bond and help the family strengthen their communication." In the therapist's assessment, "It is [Mother's] wish . . . to do whatever it takes on her part to prove to the courts that she can care for her children."

The second letter was from Mother to her attorney. It confirmed Mother's participation in family therapy "so that I can be a better parent for my children and to my children." It also described her visits with them: "[W]e play and eat and talk and I listen to all [their] concerns and it's in our best interest that we be allowed to spend more time together."

Respondent notes that Mother's three oldest children have been away from her care for more than two years, and her youngest was removed from her care when she was three months old. Respondent also cites Mother's past shortcomings in her parenting. These facts perhaps go to the likelihood of Mother's prevailing in convincing the court that a change in the court's order is in the children's best interests, but say little about whether Mother has alleged a prima facie case which is the question before us. As to that question, the oldest of Mother's four children was 10 years old when the proceedings started in September 2008, and the two middle children were 8 and almost 6; thus at the time of their detention, Mother's three oldest children were old enough to have bonded with her, old enough to feel the attachment they shared, and old enough to voice their feelings by telling respondent they enjoyed visiting Mother and wanted to live with her. Mother herself stated: "I want my children back. I want to do right for them." Indeed, in May 2010, respondent recommended that the two older children return to Mother's

custody and that Mother enjoy unmonitored visitation with the younger two. Seemingly only Mother's poor judgment in permitting unmonitored visitation with maternal grandmother and in taking the youngest of the four children to visit that child's incarcerated father derailed those recommendations. Nevertheless, Mother has since admitted those mistakes, claiming that therapy has taught her why she has improperly permitted maternal grandmother to interfere in Mother's life. This case is thus distinguishable from the many cases in which a child is detained at infancy or a very young age. In many of those cases although the parent visits with the child and the child seems to enjoy the visits, the parent is often described as much like a "friendly visitor." (See, e.g., *In re Jason J.* (2009) 175 Cal.App.4th 922.) There is no question on the face of the documents before the court that Mother's relationship with her children was much more than that. On this record, we find the court ought to have ordered a hearing on Mother's 388 petition. (*In re Angel B., supra*, 97 Cal.App.4th at p. 461 [hearing required if petition presents "*any* evidence" that change in order would promote bests interests of children].)

DISPOSITION

The court's order denying Mother's April 2011 petition under section 388 is reversed and the matter is remanded to the court for a hearing on the petition.

RUBIN, ACTING P. J.

I CONCUR:

FLIER, J.

Grimes, J., Dissenting

I respectfully disagree with my colleagues' conclusion that the court abused its discretion in denying a hearing on mother's Welfare and Institutions Code section 388 petition. I would affirm.

GRIMES, J.